

Clay Cullen d/b/a Arctic Framing, Inc. and United Brotherhood of Carpenters and Joiners of America, Local 210, AFL-CIO. Case 34-CA-5340

February 26, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
OVIATT AND RAUDABAUGH

Upon a charge filed by the Union July 30, 1991, the General Counsel of the National Labor Relations Board issued a complaint September 13, 1991, against Clay Cullen d/b/a Arctic Framing, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint,¹ the Respondent has failed to file an answer.²

On December 19, 1991, the General Counsel filed a Motion for Summary Judgment. On December 26, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed to be admitted if an answer is not filed within the 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the General Counsel's memorandum in support of the Motion for Summary Judgment disclose that counsel for the General Counsel, by certified letter dated October 1, 1991, notified the Respondent that unless an answer was received by

October 16, 1991, a Motion for Summary Judgment would be filed.³

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, is engaged as a carpenter contractor in the building and construction industry at its facility in New Milford, Connecticut. During the 12-month period ending August 31, 1991, it provided services valued in excess of \$50,000 for Northwestern Building Co., Inc., a Connecticut corporation, engaged as a general contractor in the building and construction industry, with an office and place of business in Torrington, Connecticut. During the 12-month period ending August 31, 1991, Northwestern Building Co., Inc., in the course and conduct of its business operations, performed services in excess of \$50,000 in States other than the State of Connecticut. We find that the Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all times material, the Associated General Contractors of Connecticut has been an organization composed of employers engaged in the construction industry which exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements with labor organizations, including the Union. On or about July 1, 1990, the Respondent entered into a collective-bargaining agreement whereby it recognized the Union as the exclusive collective-bargaining representative of the Respondent's employees in the unit.⁴ Through that agreement, which was effective until April 30, 1991, the Respondent agreed to continue the agreement in effect from year to year thereafter unless timely notice was given not less than 60 days, nor more than 120 days, prior to the next termination date, and agreed to adopt all the terms and conditions of the next succeeding agreement between the

¹ On September 13, 1991, a copy of the complaint and notice of hearing was served by certified mail on the Respondent at its business address in New Milford, Connecticut. This copy was returned to the Regional Office unclaimed by the Respondent. On October 16, 1991, a copy of the complaint and notice of hearing was personally served on the Respondent's agent, Tom Sieger, in Bantam, Connecticut, and was also left at the Respondent's business address in New Milford, Connecticut.

² We note that the Respondent's refusal or failure to claim certified mail cannot defeat the purposes of the Act. *Unbelievable Fashions*, 286 NLRB No. 78 (Oct. 26, 1987) (not reported in Board volumes).

³ This October 1, 1991 letter was returned to the Regional Office unclaimed by the Respondent. See fn. 2.

⁴ The unit is described in the collective-bargaining agreement at arts. 3 and 14-17 and constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act. Copies of the relevant articles of the collective-bargaining agreement are attached to the Motion for Summary Judgment.

Associated General Contractors of Connecticut and the Union if the agreement is renewed.

Since on or about July 1, 1990, pursuant to the above-described collective-bargaining agreement, the Union has been the designated collective-bargaining representative of the unit employees and has been recognized as such representative by the Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period May 1, 1991, through April 30, 1992. For the period from July 1, 1990, through August 30, 1992, and year to year thereafter unless timely notice is given, by virtue of Section 9(a) of the Act, the Union has been, and is, the exclusive collective-bargaining representative of the unit employees.

On or about June 20, 1991, the Union and the Associated General Contractors of Connecticut executed a successor collective-bargaining agreement effective by its terms for the period May 1, 1991, through April 30, 1994. Since on or about January 30, 1991, and continuing thereafter, the Respondent has unilaterally and without the consent of the Union failed to continue in full force and effect all the terms and conditions of the relevant collective-bargaining agreements.⁵ These terms and conditions are terms and conditions of employment of employees in the unit and are mandatory subjects of bargaining. The Respondent engaged in these acts and conduct without having afforded the union an opportunity to negotiate and bargain as the exclusive bargaining representative of the Respondent's employees in the unit with regard to such acts and conduct. By these acts and conduct, the Respondent has been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the Act.

CONCLUSIONS OF LAW

By failing and refusing to continue in full force and effect all the terms and conditions of the relevant collective-bargaining agreements with the Union, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees as required by Section 8(d) of the Act, and thereby has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

⁵ The agreements in question are the ones effective through April 30, 1991, and April 30, 1992, respectively.

REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to continue in full force and effect the terms and conditions of the collective-bargaining agreement with the Union; to make the contractually required contributions to the various funds, as set forth in the collective-bargaining agreement with the Union, in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979); and to make the employees whole for any losses they may have suffered as a result of the Respondent's failure and refusal to continue in full force and effect the terms and conditions of the agreement, in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), and *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Clay Cullen d/b/a Arctic Framing, Inc., New Milford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to continue in full force and effect the terms and conditions of the collective-bargaining agreement with United Brotherhood of Carpenters and Joiners of America, Local 210, AFL-CIO.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in full force and effect the terms and conditions of the collective-bargaining agreement with the Union.

(b) Make the contractually required contributions to the various funds, as set forth in the collective-bargaining agreement with the Union.

(c) Make whole the unit employees, with interest, for any losses they may have suffered as a result of the Respondent's failure and refusal to continue in full force and effect the terms and conditions of the collective-bargaining agreement with the Union.

(d) Preserve and, on request, make available to the Board or its agents for examination and copy-

ing, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in New Milford, Connecticut, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to continue in full force and effect the terms and conditions of the collective-bargaining agreement with United Brotherhood of Carpenters and Joiners of America, Local 210, AFL-CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in full force and effect the terms and conditions of the collective-bargaining agreement with the Union.

WE WILL make the contractually required contributions to the various funds, as set forth in the collective-bargaining agreement with the Union.

WE WILL make each of the unit employees whole, with interest, for any losses they may have suffered by reason of our failure and refusal to continue in full force and effect the terms and conditions of the collective-bargaining agreement with the Union.

CLAY CULLEN D/B/A ARCTIC FRAMING, INC.